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5 **UNITED STATES DISTRICT COURT**  
6 **EASTERN DISTRICT OF CALIFORNIA**  
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8 NORMA OROZCO,

9 Plaintiff,

10 v.

11 GRUMA CORPORATION, a Nevada  
corporation; and DOES 1 to 10,

12 Defendants.  
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) Case No. 1:20-cv-1290-AWI-EPG

) Judge: Hon. Anthony W. Ishii

) Removed from Fresno County Superior  
Court, Case No. 20CECG01783

) **[PROPOSED] ORDER RE MOTION TO**  
14 **APPROVE PAGA SETTLEMENT AND**  
15 **DISMISSAL OF ACTION**

) (Doc. No. 36)

16 Plaintiff NORMA OROZCO (“Plaintiff”) moved for an order to approve a PAGA  
17 settlement (“PAGA Settlement”) amongst the parties (“Motion”), submitted the Declaration of  
18 Sang J Park in support thereof, the parties submitted a Joint Stipulation in Support of Motion for  
19 Approval of PAGA Settlement (“Stipulation”) and Defendant Gruma Corporation does not oppose  
20 the Motion. Plaintiff gave notice to California’s Labor Workforce Development Agency of the  
21 PAGA Settlement and her Motion on September 1, 2022. Hearing on the motion was set for  
22 October 3, 2022. In response to Plaintiff’s motion for approval, the Court to date has only received  
23 a notice of non-opposition by Defendant Gruma corporation. Because no oppositions of any kind  
were received, the motion was taken under submission without argument.

24 The Court has reviewed all papers submitted in support of the Motion, any opposition to the  
25 motion and, following hearing or the Court’s conclusion that no hearing is warranted, finds that  
26 GOOD CAUSE having been shown, the Court hereby GRANTS the Motion (Doc. No. 36) and  
27 makes the following findings and ORDERS:  
28

**[PROPOSED] ORDER RE MOTION TO**  
**APPROVE PAGA SETTLEMENT**

1. The parties arrived at the settlement following adequate informal and formal discovery, arms-length negotiations that evaluated the risks and expenses of further proceedings and benefits of resolution and, with the assistance of the Ninth Circuit Mediator, entered into a comprehensive settlement agreement on or about May 20, 2022 (“Agreement”).
2. Each party was represented by competent counsel experienced in California wage and hour litigation, including class action and PAGA litigation.
3. Pursuant to Plaintiff’s Complaint filed June 15, 2020 in the County of Fresno and removed to this Court (“Complaint”), First Amended Complaint (“FAC”) filed on August 8, 2022 (Dkt#34) (Complaint and FAC, collectively, also “the Lawsuit”), the California Labor Workforce Development Agency (“LWDA”) letter filed July 1, 2019, and the Amended LWDA letter filed May 26, 2022, Plaintiff seeks civil penalties pursuant to California Labor Code § 2698 *et seq.*, for herself and all of Defendant Gruma Corporation’s (“Defendant”) nonexempt employees working in California, at any time from September 21, 2020 through the date of payment of the Settlement Fund (“Persons Covered”) after the Court grants final approval of the PAGA Settlement (“Settlement Period”) arising from alleged violations of the California Labor Code, Wage Orders, regulations, and/or any other provisions of state and federal law that the Persons Covered suffered Labor Code violations based on (1) non-compliant rest breaks, (2) non-compliant meal periods, (3) non-compliant meal and rest period premium payments, (4) unpaid minimum and overtime wages, (5) failure to pay all wages at the agreed-upon rate, (6) standard conditions of labor violations, (7) suitable seating violations, (8) failure to comply with paid sick leave laws, (9) statutory wage violations, (10) background check violations, (11) failure to properly calculate the regular rate of pay for all purposes, (12) untimely payment of earned wages during employment and at separation of employment, and (13) non-compliant wage statements, and any other Labor Code violations that were alleged in the Lawsuit, or that could have been alleged in the Lawsuit based on the facts

alleged in the Lawsuit or such facts as accrued to the Covered Persons since the filing of the Lawsuit, which includes alleged violations of Labor Code sections 200, 201, 202, 203, 204, 204b, 204(d), 210, 216, 218.5, 221-223, 226, 226(a), 226(e), 226.3, 226.6, 226.7, 245-248.5, 256, 432.5, 432.7, 510, 512, 512(a), 558, 558.1, 1024.5, 1174, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2441, 2698, 2699, 2802, 2810.5 and all applicable IWC Wage Orders (collectively, "Released Claims").

4. The terms of the Agreement identified in the Stipulation between Plaintiff and Defendant are fair, adequate, reasonable and equitable between Plaintiff, Defendant, the Persons Covered, and the State of California, and fulfill the policies underlying California's Private Attorney General Act and the Stipulation is not arbitrary, oppressive or confiscatory and the Court hereby approves the Stipulation and directs the named parties to effectuate the Agreement according to its terms. The Court also finds that the Stipulation and Agreement will avoid additional and potentially substantial litigation costs, as well as delay and risks if the parties were to continue to litigate the case. The Court has reviewed the monetary recovery being provided as part of the Agreement and recognizes the significant value afforded to LWDA, Plaintiff, and the Persons Covered.

5. The Agreement is not an admission by Defendant, nor is this Order a finding of the validity of any allegation or of any wrongdoing by Defendant. Neither this Order, the Stipulation, the Agreement, nor any document referred to herein, nor any action taken to carry out the Agreement, may be used as an admission of any fault, wrongdoing, omission, concession, or liability whatsoever by or against Defendant.

6. In accordance with the Stipulation and Agreement, which the Court hereby approves, based on good cause showing for the reasons set forth in Plaintiff's motion and supporting papers, and with no objection received from Defendant: The total payment shall be a maximum amount of Five Hundred Twenty-Five Thousand (\$525,000.00) (the "Gross Settlement Amount"), which includes any and all payments to the Persons Covered, payment to the LWDA, Plaintiff's Counsels' fees

and costs, litigation costs and expenses, taxes, withholdings, expenses, civil penalty payments pursuant to the PAGA, any incentive payment or service award for Plaintiff, and settlement administration costs and all third-party costs of settlement administration; the Released Claims are hereby released and the LWDA and all Persons Covered are hereby permanently enjoined from pursuing, or seeking to reopen, any Released Claims against any Released Parties. Defendant shall not be required to pay more than Five Hundred Twenty-Five Thousand (\$525,000.00) in conjunction with the Settlement and this Order.

7. \$175,000 of the Gross Settlement Amount will be used to pay Plaintiff's attorneys' fees. \$8,247 of the Gross Settlement Amount will be used to pay Plaintiff's attorneys' costs. \$5,000 will be used to pay the PAGA Representative. \$10,637 will be used to pay the Third-Party Administrator's ("TPA") costs.

8. \$326,116 represents the amount payable to the LWDA and the Persons Covered. Seventy-five percent (75%) (*i.e.*, \$244,587) will be distributed to the LWDA as required by PAGA and the remaining (25%) (*i.e.*, \$81,529) will be distributed to the Persons Covered ("Net PAGA Settlement Amount").

9. The individual PAGA payments to the Persons Covered shall be issued from the 25% portion of the Net PAGA Settlement Amount by dividing each Persons Covered's Individual PAGA Pay Periods by the Total PAGA Pay Periods and multiplying this result by the 25% portion of the Net PAGA Settlement Amount. "Total PAGA Pay Periods" for this PAGA Settlement is the total number of pay periods worked by all Persons Covered during the Settlement Period according to Gruma's business records. "Individual PAGA Pay Periods" will be the total number of pay periods worked by an individual Person Covered during the Settlement Period according to Gruma's business records.

10. The payments to Persons Covered will not be reduced by payroll tax withholding and deductions; instead, the TPA will issue to the Persons Covered an IRS Form 1099 and its state and local equivalents with respect to each individual PAGA

1 payment allocated to penalties.

2 11. The Gross Settlement Amount will be funded by Defendant within twenty (20) days  
3 after the Court's order granting final approval of the PAGA Settlement is final and  
4 no longer subject to appeal ("Approval"). Gruma will cooperate with a TPA  
5 (designated by Plaintiff, and subject to Gruma's approval, and paid for from the  
6 Gross Settlement Amount) to provide distributions to the LWDA and the Persons  
7 Covered.

8 12. Within fourteen (14) calendar days after Approval, Defendant will provide the TPA  
9 a complete list of all Persons Covered ("Employee List"). The Employee List will  
10 be formatted in Microsoft Office Excel and will include each Persons Covered's full  
11 name; most recent mailing address and telephone number; Social Security number;  
12 the respective number of pay periods during which each Persons Covered worked  
13 during the Settlement Period and any other relevant information needed to calculate  
14 settlement payments. Except for identifying the total number of Persons Covered  
15 contained therein, the Employee List, including identification and contact  
16 information, is confidential and shall not be shared with Plaintiff or Plaintiff's  
17 Counsel, unless Gruma consents to the disclosure in writing or unless the Court  
18 orders the disclosure. Using the provided information and after making any updates  
19 as necessary, the TPA will perform an address check via the UPS National Change  
20 of Address database and update any necessary addresses for the Persons Covered.

21 13. As soon as practical after funding of the Gross Settlement Amount, ("Date of  
22 Settlement Payments"), the TPA will issue payments to: (a) Persons Covered; (b)  
23 the LWDA; (c) Plaintiff; (d) Plaintiff's Counsel; and (e) itself. The TPA, and not  
24 Defendant, will issue the appropriate tax forms for all payments issued under this  
25 PAGA Settlement. In the event of any court orders or appeals following Approval  
26 prevent funding of the PAGA Settlement, the TPA shall ensure that the funds are  
27 placed in an interest-bearing account until the resolution of all such orders or  
28 appeals. Following the resolution of any orders or appeals, the TPA shall issue the

1 payments as set forth above within (14) calendar days after the orders or appeals are  
2 final and no longer subject to any appeal. In the event the PAGA Settlement is not  
3 finally approved following any such orders or appeal(s), the amounts funded by  
4 Defendant shall be refunded to Defendant, including all interest earned.

- 5 14. On the Date of Settlement Payments, the TPA will issue to each of the Persons  
6 Covered one check for his or her share of the individual PAGA payment (as set  
7 forth in paragraph 11 above) along with an explanatory notice which will be  
8 mutually approved by the parties. Prior to mailing, the TPA will perform a search  
9 based on the UPS National Change of Address Database for information to update  
10 and correct for any known or identifiable address changes. Any checks returned as  
11 non-deliverable on or before the check cashing deadline will be sent promptly via  
12 regular First-Class U.S. Mail to the forwarding address affixed thereto. If no  
13 forwarding address is provided, the TPA will promptly attempt to determine the  
14 correct address using a skip-trace, or other search using the name, address or Social  
15 Security number of the Persons Covered involved and will then perform a single re-  
16 mailing. Checks will remain negotiable for 180 days. Those funds represented by  
17 un-cashed checks which remain outstanding 180 days after the mailing of the  
18 settlement checks by the TPA will be tendered to the unclaimed property fund of  
19 The State Controller's Office. All settlement payments to Persons Covered will be  
20 treated as miscellaneous income for which a 1099 will be issued. Plaintiff will  
21 assume any tax obligations or consequences which may arise under the Agreement  
22 and will hold Defendant free and harmless from and against any claims resulting  
23 from the tax treatment of such payments. If any state or federal taxing authority  
24 contacts, investigates, or pursues any action against Plaintiff for her individual share  
25 of taxes related to any payments made under the Agreement, Plaintiff will be  
26 responsible for her own defense of and payment for any claim of unpaid taxes,  
27 interest, or penalties brought by any state or federal taxing authority for her share of  
28 any state or federal tax obligation related to any payments made under the

Agreement.

15. Once the PAGA Settlement is final and no longer subject to appeal, Plaintiff and her counsel shall dismiss her Class/PAGA appeal with the Ninth Circuit with prejudice.

In the event Plaintiff does not timely file the dismissal of her Class/PAGA appeal with prejudice, Gruma may proceed to do so.

16. The Court hereby confirms Sang J Park of Park APC and Jacob George of Mathew & George as PAGA Counsel; Norma Orozco as the PAGA Representative; and Atticus Administration, LLC, as the TPA.

17. The Court determined that the amount sought for attorneys' fees and costs, \$175,000 and \$8,247, respectively, is reasonable within the meaning of Labor Code section 2699(g)(1).

18. The Court determined that the payment in the amount of \$5,000 to the Plaintiff as the PAGA Representative is reasonable.

19. The Court determined that the payment in the amount of \$10,637 to the TPA, Atticus Administration, LLC is reasonable.

20. The TPA shall make the payments to the LWDA, the Persons Covered, Plaintiff's counsel, Plaintiff, and to the TPA as provided for herein.

21. The Court further finds that notice of the Agreement has been timely provided to the LWDA, as required by PAGA and Labor Code section 2699, subdivision (1)(2), in particular.

22. Neither the Agreement, the Stipulation nor any act performed or document executed pursuant to or in furtherance of a PAGA Settlement (a) is or may be or may be used as an admission of, or evidence of, the validity of any Released Claims, or of any wrongdoing or liability of the Released Parties, or any of them; or (b) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of the Released Parties, or any of them, in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal.

Defendant may file the Stipulation and/or this Order in any other action that may be

brought against it in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction or any theory of claim preclusion or similar defense or counterclaim.

23. This action is dismissed in its entirety with prejudice as to all of Plaintiff's individual claims asserted in the action and as to the Released Claims to the extent they are asserted on behalf of the Persons Covered.

24. This Court shall retain jurisdiction over any issues that may arise with respect to enforcing the terms of the PAGA Settlement.

25. Following distribution of the settlement proceeds, Plaintiff is ordered to report to the Court that the proceeds have been distributed and this action will thereafter be dismissed with prejudice in its entirety.

IT IS SO ORDERED.

Dated: October 7, 2022

  
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SENIOR DISTRICT JUDGE